REMARKS

After entry of the foregoing amendments, Claims 1-10 are pending in the application. By the foregoing amendments, Claim 3 has been amended and Claim 4 has been cancelled without prejudice or disclaimer. Further examination and reconsideration in view of the foregoing amendments and the following remarks is respectfully requested.

Objection to the Drawings

In the Office Action, the drawings were objected to in view of the margins of Figures 1, 6 and 8. Corrected formal drawings for figures 1, 6 and 8 are submitted herewith.

Claim Objection

In the Office Action, Claim 3 was objected to based upon a minor informality. That informality has been corrected by the foregoing amendment. Applicant thanks the Examiner for noting the error.

Rejection under § 112

In the Office Action, Claim 4 was rejected under § 112, § 2, as being indefinite. By the foregoing amendments, Claim 4 has been cancelled, thereby rendering this rejection moot.

Rejections under § 102

In the Office Action, Claims 1-10 were rejected under 35 U.S.C. § 102(e) as being anticipated by Evans (U.S. Patent No. 6,151,312). Applicant reserves the right to challenge whether Evans is available as prior art to this application. Applicant respectfully traverses the rejection under § 102(e). Though the following remarks are primarily directed to independent claims 1 and 8, they apply with equal force to each of the pending claims.

Evans does not teach or disclose the elements of Claims 1-10. For example, independent Claim 1 describes, *inter alia*, that the base station CPU is alerted if a packet was determined to be a padding packet. Next, the bandwidth allocation of the CPE associated with the padding packet is reduced. Evans does not show such steps. The sections of Evans cited in connection with these elements of Claim 1 merely disclose that the system of Evans includes modems (col. 14, line 58) and that MAC messages are sent between the base station and the NIU (col. 15, lines 24-26, and col. 17, lines 24-53). Those portions of Evans, and in fact all of Evans, do not describe the concept of detecting padding packets and, in response to that detection, reducing the bandwidth allocation of the CPE that is transmitting the padding packets.

An advantage of the claimed method is that it eliminates the necessity to send MAC-type requests to reduce the amount of bandwidth allocated to a CPE. Eliminating MAC-type requests reduces the overhead costs to the system. In addition, the function of detecting padding packets can be allocated to the modem (*see* Claim 5) which can increase the response time of the system to a requested de-allocation.

Similarly, Evans does not teach or disclose all of the elements of Claim 8. For example, Claim 8 includes a base station CPU alerting means which is coupled to the packet determining means, and which alerts a base station of a padding packet and the associated CPE. The section of Evans identified in connection with this element in the Office Action merely describes MAC messages which are transmitted between the NIU and the AIU. However, none of those MAC messages identify when a padding packet has been received by the base station. Particularly, none of those messages would indicate when the base station received a padding packet. That is because those messages are sent from the NIU and the NIU cannot tell when the base station has received such a packet. Additionally, in connection with Claim 9, Evans does not describe a modem with the ability to determine when a padding packet has been received. In fact, Evans describes that "in-band ATM signaling cells are passed directly to the central processing unit (6) which interprets the request in pulling responses." Evans, col. 31, lines 5-7.

CONCLUSION

The Applicant has endeavored to address all of the Examiner's concerns as expressed in the outstanding Office Action. Accordingly, amendments to the claims, the reasons therefor, and arguments in support of the patentability of the pending claim set are presented above. Any claim amendments which are not specifically discussed in the above remarks are made in order to improve the clarity of claim language, to correct grammatical mistakes or ambiguities, and to otherwise improve the capacity of the claims to particularly and distinctly point out the invention to those of skill in the art. In light of the above amendments and remarks, reconsideration and withdrawal of the outstanding rejections is specifically requested. If the Examiner finds any remaining impediment to the prompt allowance of these claims that could be clarified with a telephone conference, the Examiner is respectfully requested to initiate the same with the undersigned.
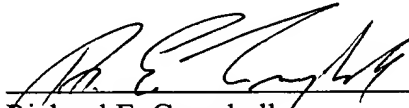
Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 5/19/04

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